

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
JOHN PIACERE AND HELEN KOURLAND : DETERMINATION
for Redetermination of a Deficiency or for Refund of New : DTA NO. 830895
York State Personal Income Tax under Article 22 of Tax :
Law for the Year 2020. :

Petitioners, John Piacere and Helen Kourland, filed a petition for redetermination of a deficiency or for refund of New York State personal income tax under article 22 of the Tax Law for the year 2020.

On January 27, 2023, the Division of Tax Appeals issued a notice of intent to dismiss petition to petitioners pursuant to 20 NYCRR 3000.9 (a) (4). The Division of Taxation, appearing by Amanda Hiller, Esq. (Daniel Schneider, Esq., of counsel), submitted a letter in support of the dismissal. Petitioners, appearing pro se, did not submit a response by February 27, 2023, which date began the 90-day period for the issuance of this determination. After due consideration of the documents submitted, Donna M. Gardiner, Acting Supervising Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Tax Appeals lacks jurisdiction over the petition.

FINDINGS OF FACT

1. Petitioners, John Piacere and Helen Kourland, filed a petition with the Division of Tax Appeals on March 22, 2022.

2. The petition failed to attach a statutory notice or conciliation order.
3. On June 16, 2022, the Division of Tax Appeals made a written request to petitioners for a copy of the statutory notice being protested.
4. Petitioners did not provide any statutory notice.
5. On January 27, 2023, the Division of Tax Appeals issued a notice of intent to dismiss petition to petitioners. The notice stated, in sum, that the Division of Tax Appeals lacked jurisdiction to review the merits of the petition because it was in improper form.
6. On February 14, 2023, in response to the notice of intent to dismiss petition, the Division of Taxation (Division) submitted a letter stating:

“[t]he Division is in receipt of the Notice of Intent to Dismiss the petition in the above referenced matter. As the petition submitted was not in proper form, as required by 20 NYCRR 3000.3 and Tax Law § 2008 because the petitioner neglected to include a copy of the statutory notice or conciliation order issued to petitioner the Division is in agreement with the proposed dismissal.”
7. Petitioners did not submit a response to the notice of intent to dismiss petition.

CONCLUSIONS OF LAW

A. The Division of Tax Appeals is a forum of limited jurisdiction (Tax Law § 2008; *Matter of Scharff*, Tax Appeals Tribunal, October 4, 1990, *revd on other grounds sub nom New York State Dept. of Taxation and Fin. v Tax Appeals Trib.*, 151 Misc 2d 326 [Sup Ct, Albany County 1991, Keniry, J.]). Its power to adjudicate disputes is exclusively statutory (*id.*). The Division of Tax Appeals is authorized “[t]o provide a hearing as a matter of right, to any petitioner upon such petitioner’s request . . . unless a right to such hearing is specifically provided for, modified or denied by another provision of this chapter” (Tax Law § 2006 [4]).

All proceedings in the Division of Tax Appeals “shall be commenced by the filing of a petition . . . protesting any written notice of the division of taxation which has advised the

petitioner of a tax deficiency, a determination of tax due, a denial of a refund or credit application . . . or any other notice which gives a person a right to a hearing” (Tax Law § 2008 [1]).

B. Pursuant to 20 NYCRR 3003.3 (b) (8), a petition shall contain, “for the sole purpose of establishing the timeliness of the petition, a legible copy of the order of the conciliation conferee if issued; if no such order was previously issued, a legible copy of any other statutory notice being protested.” In this case, no statutory notice was attached.

C. On June 16, 2022, a written request was made to petitioners asking them to supply a statutory notice. They failed to do so. Where petitioners fail to correct the petition within the time prescribed, the Supervising Administrative Law Judge will issue a notice of intent to dismiss petition (*see* 20 NYCRR 3000.3 [d]). Such notice of intent was issued on January 27, 2023. Petitioners failed to respond to the notice of intent.

As petitioners failed to attach a statutory notice contemplated by Tax Law § 2008, the Division of Tax Appeals lacks jurisdiction of the subject matter of the petition and dismissal is warranted (*see* 20 NYCRR 3000.3 [d]; 3000.9 [a] [4] [i]; *see Matter of Richardson*, Tax Appeals Tribunal, November 17, 2022).

D. It is ORDERED, on the motion of the acting supervising administrative law judge, that the petition is dismissed with prejudice as of this date.

DATED: Albany, New York
May 25, 2023

/s/ Donna M. Gardiner
ACTING SUPERVISING ADMINISTRATIVE LAW JUDGE